IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 342 of 1993

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

SHRI RAJ FERTILIZERS

Appearance:

MR ST MEHTA APP for Petitioner

MR YOGESH S LAKHANI for Respondent No. 1, 2, 3, 4, 5, 6

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 14/09/2000

ORAL JUDGEMENT

This revision application under Section 397 CrPC has been preferred by the State against the judgment and order dated 16th April, 1993 passed by the learned

Special Judge, Junagadh in Special Criminal Case No. 4 of 1988.

2. The aforesaid special criminal case no. 4 of 1988 was registered against the six accused persons, pursuant to the complaint lodged by the Agricultural Inspector for violation of Clause (13) of the Fertilizer Control Order, 1957. The accused filed an application Exh. 29 seeking discharge on the ground that the complaint lodged against the accused was barred by the period of limitation prescribed under Section 468 CrPC and no cognizance of the offence could have been taken by the learned Special Judge. It was not disputed that the offence alleged to have been committed by the accused was punishable under Section 7 [1](a)[ii] of the Essential Commodities Act, 1955 [hereinafter referred to as, `the Act'] i.e., it was punishable with imprisonment for a term which shall not be less than three months but which may extend to seven years and shall also be liable to fine. It was, however, contended that Section 12 AA of the Act requires that all offences under the Act shall be tried by a Special Court in a summary manner. The Special Court is empowered to pass the sentence of imprisonment for a term not exceeding two years. Hence, whatever be the nature or gravity of the offence, no punishment of imprisonment for a term exceeding two years can be imposed. It must, therefore, be held that no offence under the Act is punishable with imprisonment for a term exceeding two years. Thus, the offence alleged to have been committed by the accused also cannot be said to be punishable with imprisonment for a term exceeding two years. Since the offence alleged is punishable with imprisonment for a term not exceeding two years, the complaint ought to have been lodged within a period of three years from the date of the offence, as provided in Section 468 (2) (c) CrPC. The aforesaid is the line of argument which appealed to the learned Sessions Judge. Since admittedly the complaint was not lodged within a period of three years, the complaint was dismissed as time barred and the accused were discharged. Feeling aggrieved, the State has preferred the present Revision.

I am unable to agree with the line of argument adopted by the learned Special Judge. What Section 12AA provides is the procedure as regards taking cognizance and the trial for offence under the Act and the power of the Special Court to impose punishment. The said Section, in my view, cannot be said to be a penal section. The penal section essentially is Section 7 of the Act which provides for punishment to be imposed for an offence under the Act. Undoubtedly, Clause (f) of

sub-section 1 of Section 12 AA and the proviso thereto curtails power of the Special Court to pass a sentence of imprisonment for a term exceeding two years ie., the Special Court constituted under Clause (a) of sub-section 1 of Section 12AA of the Act cannot impose a punishment of imprisonment for a term exceeding two years. However, the said curtailment of the power of passing a sentence of imprisonment cannot make the offence less grave. The penal provision for such offence provides for imprisonment for a term which may extend to seven years. I am of the opinion that what is relevant for the purpose of Section 468 CrPC is the penal provision and not the power of imposition of penalty of the Special Court. Section 468 CrPC provides for period of limitation for offence which are punishable with fine only and which are punishable with imprisonment for a term not exceeding one year, and which are punishable with imprisonment for a term exceeding one year but not exceeding three years. The words `offences punishable' should necessarily be referable to the penal provisions. In the present case, indisputably the penal provision make the offence punishable with imprisonment which may extend to seven years. Since no period of limitation has been provided for offences punishable with term exceeding three years, the Special Court was empowered to take cognizance of the offence at any time i.e., even after the expiry of three years from the date of the offence. In the present case, therefore, the Special Court was not right in discharging the accused persons. Same is the view expressed by the Allahabad High Court in the matter of M/s. Nand Kishore Agrawal & Company v. State of U.P., [1990 Cri.L.J 1885] and by the Patna High Court in the matter of R.K Khanna & Ors. v. State of Bihar & Anr., [1989 Cr.L.J NOC 88].

In view of the above discussion, the revision application is allowed. Rule is made absolute. The judgment and order of the learned Special Judge, Junagadh of 16th April, 1993 passed below application Exh. 29 in Special Criminal Case No. 4 of 1988 is quashed and set-aside. The Special Court shall now proceed with the trial in accordance with law. The registry will return the records and proceedings forthwith.